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## TRUSTS AND SUCCESSION

THOMAS A. THOMAS\*

The law of trusts and succession in the State of Florida has gained considerably in vitality during the period under consideration. The number of cases appearing before the Supreme Court was considerably greater than during the previous similar period and the number of statutes enacted by the Florida legislature greatly increased.

Of the several cases appearing before the Supreme Court some were cases of first impression<sup>1</sup> while others, although calling for the application of well settled principles of law, presented very interesting factual situations which are worthy of note and treatment. The subject matter of the decisions ranged from mental capacity to execute a will<sup>2</sup> to the rule against perpetuities<sup>3</sup> and included will construction,<sup>4</sup> the right to attorney's fees for representing will contestants,<sup>5</sup> disinheritance by wrongful conduct,<sup>6</sup> the right of a survivor to revoke a reciprocal will,<sup>7</sup> devisees right to contest the will,<sup>8</sup> and constructive<sup>9</sup> and resulting<sup>10</sup> trusts.

The statutes passed by the 1955 legislature constitute justification for encouragement since they represent a clear manifestation of the legislature's intent to clarify and improve the law of trusts and succession by dispensing with outdated and time consuming steps and procedures in the probate process.<sup>11</sup>

The necessary effect of some of these acts is to preserve the estate from unnecessary expense without sacrificing safeguards insuring proper administration.<sup>12</sup> One statute<sup>13</sup> derives particular significance from the fact that it was apparently enacted for the purpose of codifying a recent Supreme Court decision.<sup>14</sup>

Although the legislature has accomplished a great deal by way of streamlining the law of trusts and succession, a great deal more remains to

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1. *In re Watkin's Estate*, 75 So.2d 194 (Fla. 1954); *In re Wilmott's Estate*, 66 So.2d 465 (Fla. 1953); *Doherty v. Traxler*, 66 So.2d 274 (Fla. 1953).

2. *Murrey v. Barnett Nat'l Bank*, 74 So.2d 647 (Fla. 1954); *Donnelly v. Mann*, 68 So.2d 584 (Fla. 1953); *In re Kiggen's Estate*, 67 So.2d 915 (Fla. 1953).

3. *Cartinhour v. Houser*, 66 So.2d 686 (Fla. 1953).

4. *Wright v. Sallet*, 66 So.2d 237 (Fla. 1953).

5. *In re Gleason's Estate*, 74 So.2d 360 (Fla. 1954).

6. *Doherty v. Traxler*, 66 So.2d 274 (Fla. 1953).

7. *Simpson v. Ivey*, 67 So.2d 687 (Fla. 1953).

8. *Medary v. Dalman*, 69 So.2d 888 (Fla. 1954).

9. *Brown v. Skinner*, 73 So.2d 221 (Fla. 1954); *Omwake v. Omwake*, 70 So.2d 565 (Fla. 1954).

10. *Simpson v. Hoffman*, 75 So.2d 703 (Fla. 1954); *D'Uva v. D'Uva*, 74 So.2d 889 (Fla. 1954).

11. FLA. STAT. § 734.22 (1955).

12. FLA. STAT. § 733.13 (1955); FLA. STAT. § 732.69 (1955).

13. FLA. STAT. § 731.03 (1955).

14. *In re Watkin's Estate*, 75 So.2d 194 (Fla. 1954).

be accomplished. Legislation which is discriminatory in nature and no longer serves a useful purpose, remains in effect.<sup>15</sup> Legislative safeguards which should be imposed remain lacking.<sup>16</sup>

It is, therefore, one purpose of this article to reflect legislative shortcomings through an analysis of recent Supreme Court decisions and statutes.

#### DECISIONS

*Unworthy Heirs.* In the absence of statute, wrongful conduct by an heir toward an intestate is insufficient to interfere with the heir's right to inherit under the laws of descent and distribution. This result generally prevails irrespective of the nature of the wrongful conduct; even though the conduct complained of is murder.<sup>17</sup> This holding is justified upon the premise that since the laws of descent and distribution prescribe a particular scheme for the disposition of property of an intestate, a judicial alteration of that scheme would constitute a performance of the legislative function. If there are to be any exceptions to the scheme under the laws of descent and distribution it is necessarily and peculiarly legislative in nature. In order to preclude the obvious inequities in permitting an heir to profit from his own wrongdoing, legislatures have enacted statutes which have been largely motivated by public sentiment. In this respect, the Florida legislature has limited its activity to a single statute<sup>18</sup> which has the effect of denying a person *convicted* of murder from inheriting from his murdered ancestor.

There is no statute in Florida affecting a spouse's right to inherit after he has been guilty of desertion and a bigamous marriage. In the light of this profound lack of legislation, the Florida Supreme Court faced the problem squarely and for the first time in the case of *Doherty v. Traxler*.<sup>19</sup> In that case, the husband deserted his wife 24 hours after the marriage. He was unheard of until after his wife's death, which was twenty years later, when he appeared for the purpose of claiming her estate as her heir under the laws of descent and distribution.<sup>20</sup> It appeared that in his twenty-year absence he entered into a bigamous marriage with a woman, with whom he was living at the time he attempted to claim his wife's estate. His claim was contested by the brother of his wife who alleged that it would be inequitable to permit the husband to inherit in the light of his desertion and bigamy. In denying the husband the right to inherit, the Supreme Court did so upon the ground that the husband, by virtue of his wrongful conduct, was estopped from claiming any interest in his wife's estate. It thus appears that the scheme of distribution prescribed by law<sup>21</sup> was altered by

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15. FLA. STAT. § 731.19 (1945).

16. E.g., a statute requiring a person having a claim against an estate to file both the claim and notice of action in the County Judge's Court.

17. ATKINSON, WILLS, § 37 (2d ed. 1953).

18. FLA. STAT. § 731.31 (1945).

19. 66 So.2d 274 (Fla. 1953).

20. FLA. STAT. § 731.23 (1945).

21. *Ibid.*

the Supreme Court by virtue of the equities surrounding the circumstances. Although the result arrived at by the court is most desirable when viewed in the light of justice and equity, it is doubtful whether the Supreme Court should undertake to make exceptions to the laws of descent and distribution; particularly since the legislature has undertaken to do so and has limited its activity in that regard to a single exception, in the case of murder. It is also doubtful whether a true estoppel existed as against the husband. The Supreme Court upon other occasions has insisted upon the element of reliance to detriment in order to create an estoppel,<sup>22</sup> which element appears completely lacking in the instant case.

*Will Construction.* It is a cardinal rule of will construction that the intent of the testator is to be given full force and effect whenever possible.<sup>23</sup> This rule is fortified by the equally well established principle that a will is to be sustained whenever possible, since the law favors testacy over intestacy.<sup>24</sup> Both of these principles found application in the factually interesting case of *Wright v. Sallet*,<sup>25</sup> wherein the Supreme Court had the problem of determining the intent of the testator in devising three homes described by street and number, and without delineation or other demarcation. The homes were adjacent to one another and it was contended that the devise was void for want of definiteness. In denouncing this contention the Supreme Court declared:

The law is well settled that lands may be devised by street and number and such devises carry the real property, grounds and other appurtenances on which the dwelling is located.<sup>26</sup>

In effect, the Supreme Court reasoned that the three devisees named in the will were tenants in common of an undivided one-third interest and would hold the property in that capacity until a mutual division is made and perfected. It is submitted that this result is the only one possible when an effort is made to give full force and effect to the testator's intent. Since the testator devised the three homes by street and number and without more specific description, it is quite evident that he intended the devisees to share in the property equally and any other construction placed upon the testamentary provision would obviously constitute violence to that intent.

*Will Contestant's Right to Attorney's Fees.* A personal representative, either by initiating an action for the benefit of an estate or by defending an action on behalf of the estate, is entitled to reimbursement for any and all expenses necessarily incurred.<sup>27</sup> However, the right of a person, other than the personal representative, contesting the validity of a subsequent will, to

22. *Price Mercantile Co. v. Gay*, 44 So.2d 87 (Fla. 1950).

23. *In re Barrett's Estate*, 159 Fla. 901, 33 So.2d 159 (1948); *Husson v. Bensel*, 124 Fla. 304, 168 So. 395 (1936); *Roberts v. Mosely*, 100 Fla. 267, 129 So. 835 (1930).

24. *In re Smith*, 49 So.2d 337 (Fla. 1950).

25. 66 So.2d 237 (Fla. 1953).

26. *Id.* at 238.

27. FLA. STAT. § 734.01(2) (1951).

an allowance from the estate of attorney's fees is subject to conflicting views. According to some states the right of a will contestant to an allowance of fees depends upon probable justification for initiating the contest.<sup>28</sup> However, according to what appears to be the prevailing view, the right to attorney's fees in such instances depends upon the successful conclusion of the contest.<sup>29</sup>

In the case of *Wilmott's Estate*<sup>30</sup> which was a case of first impression in the State of Florida, the Supreme Court subscribed to the latter position upon the theory that the prevention of distribution under an invalid will necessarily has the effect of benefiting the estate, although nothing has been added to the value of the corpus of the estate. Consequently, although the distribution of the estate under the laws of descent and distribution is essentially the same as it would have been had it been disposed of according to the invalid will, attorney's fee would be awarded to the contestant for successfully setting the will aside. Success in setting the will aside is an essential ingredient before attorney's fees will be awarded since the Supreme Court has held that heirs who unsuccessfully attempted to destroy a trust created under their ancestor's valid will are not entitled to attorney's fees.<sup>31</sup> Further, an unsuccessful attempt to revoke the probate of a will is not justification for the award of attorney's fees.<sup>32</sup>

*Rule Against Perpetuities.* At the common law, the period of the rule against perpetuities consisted of a life or lives in being plus 21 years thereafter, plus the period of gestation.<sup>33</sup> This common law period has been accepted by Florida and remains in full force and effect.<sup>34</sup> When applied to a particular situation, it requires that the title to property must be vested, if at all, within a designated life or lives in being plus 21 years thereafter. In determining whether the rule has been violated the courts are assisted by the principles that the law favors the early vesting of estates; and that if a will is fairly susceptible of two constructions, one of which would turn it into an illegal perpetuity, and the other would make it valid and operative, the latter would be adopted upon the presumption that the testator intended to execute a valid and binding will.<sup>35</sup> Thus, where the testatrix provided that it was her intention that all of her property be kept intact for a period of not less than ten years, or longer in the discretion of the executor or trustee, and that at the end of ten years the executor or trustee could, if he desired, make distribution to named beneficiaries, the rule against perpetuities is not violated.<sup>36</sup> The

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28. *Conner v. Brown*, 39 Del. 529, 3 A.2d 64 (1938).

29. *In re Merica's Estate*, 99 Neb. 229, 155 N.W. 887 (1915).

30. 66 So.2d 465 (Fla. 1953).

31. *Lewis v. Caillard*, 70 Fla. 172, 69 So. 797 (1915).

32. *Smith v. Callison*, 152 Fla. 516, 12 So.2d 381 (1943).

33. *Story v. First Nat'l Bank and Trust Co.*, 115 Fla. 436, 156 So. 101 (1934).

34. *Ibid.*

35. *Cartinhour v. Houser*, 66 So.2d 686 (Fla. 1953).

36. *Ibid.*

rationale employed by the court in sustaining the provision was to the effect that the testatrix had intended that the property was to vest in the named beneficiaries immediately upon her death and only the possession of the property was to be withheld for the minimum period of ten years. When the decision is considered in the light of the construction used by the court, it is, of course, correct since it is well established that the rule against perpetuities applies to remoteness of vesting and has no application where mere possession of the property is postponed.<sup>37</sup>

*Stock Dividend.* In the case of *In re Vail's Estate*,<sup>38</sup> the Florida Supreme Court was for the first time confronted with the problem of who was entitled to a stock dividend declared subsequent to the execution of the will, but prior to the testator's death. The specific legatee contended that a stock dividend constituted a mere change in form and not in substance, consequently the additional shares so acquired should pass under the specific bequest. The residuary legatee contended that there was no substantial difference between a cash and stock dividend and since a cash dividend would inure to the benefit of the residuary legatee,<sup>39</sup> so should the stock dividend. After an exhaustive examination of the authorities, the Florida Supreme Court held that there was a marked distinction between a cash and stock dividend in that a cash dividend carries with it absolute and unbridled dominion and control over the subject matter, whereas a stock dividend represented a limited, circumscribed dominion and control of the assets of the declaring corporation. In this respect the Florida Supreme Court subscribed to the minority view.

Apparently, in subscribing to this view the court failed to fully understand two elements. First, when a stock dividend is declared it simply amounts to a transfer by the corporation to its capital account either surplus or accumulated funds which would otherwise be paid in cash to the stockholders.<sup>40</sup> Second, when a stockholder obtains a stock dividend it represents an interest over and above his original stockholding and could very easily be liquidated and converted into cash. It thus appears that the distinction made by many courts between a stock and cash dividend amounts to a distinction of form rather than substance.

*The Right of a Survivor to Revoke a Reciprocal Will.* The right of a survivor to mutual wills to revoke is, of course, dependent upon the existence of a contract between the parties. While it can be reasonably implied that the parties to a mutual will have agreed to execute a will it does not necessarily follow that an agreement not to revoke has been entered into either expressly or by implication. In this respect, there is no separate law of contracts in wills; however the existence of an agreement not to revoke

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37. 66 So.2d 686, 688-689 (Fla. 1953).

38. 67 So.2d 665 (Fla. 1953).

39. *Id.* at 668.

40. *Sherman v. Riley*, 43 R.I. 202, 110 Atl. 629 (1920).

must necessarily be established as in the case of the other contracts. Consequently, those who allege the existence of an agreement not to revoke have the burden of proving the existence of the contract by a preponderance of the evidence.<sup>41</sup>

The fact that an agreement not to revoke has been entered into between parties to a mutual will does not suggest that the will of the survivor executed in violation of the agreement cannot be admitted into probate. To deny probate would necessarily confer upon the County Judge's Court the obligation of determining issues such as the existence of the contract, the validity of the agreement and its specific performance, which would clearly be beyond his jurisdiction. Therefore, when a survivor to mutual wills violates an agreement not to revoke it appears that the only remedy available should be in the form of a constructive trust in chancery.

*Mental Capacity.* The Florida Statutes require that a person, in order to be competent to execute a will, must be of "sound mind."<sup>42</sup> This requirement is not necessarily violated through old age or mental weakness.<sup>43</sup> Nor does the fact that the testator was habitually intoxicated<sup>44</sup> or used narcotics<sup>45</sup> affect his testamentary capacity. So long as the testator has a recognition of the nature of the disposition he is making, the extent of his property and the natural objects of his bounty,<sup>46</sup> the requirement of "sound mind" is deemed satisfied. Mental capacity to execute a will is, of course, determined as of the time the will is executed.<sup>47</sup> Thus, although a testator is insane at the time of his death, his will is valid if executed during a lucid interval.<sup>48</sup> The question of "mental capacity" is one of fact and upon appeal it is the duty of the court to give effect to findings made by the trier of fact if supported by substantial competent evidence.<sup>49</sup>

*Enforceability of Contracts to Devise.* Contracts to devise property are generally held to be valid and enforceable so long as they are founded upon good and adequate consideration. In that regard, it is agreed that a mere promise to leave one's property to a certain person, unsupported by any consideration, is unenforceable.<sup>50</sup> However, an agreement to furnish service, care or support to the promisor is adequate to render the agreement enforceable.<sup>51</sup> Even an agreement to live with the promisor is generally

41. *Simpson v. Ivey*, 67 So.2d 687 (Fla. 1953).

42. FLA. STAT. § 731.04 (1945).

43. *Murrey v. Barnett Nat'l Bank*, 74 So.2d 647, 649 (Fla. 1954):

. . . even a lunatic may make a will or a sale of property in a lucid interval. Feebleness of body or mental weakness does not tend to create the presumption of incompetence nor authorize a court of equity to set aside a [trust] deed.

44. *Fernstrom v. Taylor*, 107 Fla. 490, 145 So. 208 (1933).

45. *Ibid.*

46. *Neal v. Harrington*, 159 Fla. 381, 31 So.2d 391 (1946).

47. *Miller v. Flowers*, 158 Fla. 51, 27 So.2d 667 (1946).

48. *In re Carnegie's Estate*, 153 Fla. 7, 13 So.2d 299 (1943).

49. See note 43 *supra*.

50. ATKINSON ON WILLS, p. 212, § 48 (2d ed. 1953).

51. *Ibid.*

held to be sufficiently descriptive of the services to be rendered as to be worthy of specific performance.<sup>52</sup> Florida subscribes to the prevailing view as evidenced by the case of *Donnelly v. Mann*.<sup>53</sup> In that case the mother agreed to devise and bequeath her estate to her daughter upon the daughter's promise to care for the mother the balance of her lifetime. After the daughter had entered upon performance under the contract, the mother attempted to have the agreement rescinded upon the ground that the daughter had mistreated her and had exercised undue influence in securing the agreement. The court was satisfied that the evidence showed a complete lack of undue influence in the execution of the agreement and accordingly granted specific performance.

*Resulting Trusts.* A resulting trust is created by a court of equity based upon the implied intention of the parties. The circumstances giving rise to its creation are first, where an attempt to create an express trust fails; second, where an express trust already in existence terminates according to its own terms and no provision is made for disposition of the remainder; and third, where one person pays the consideration for property and has title taken in the name of another. In the latter case, where the relationship of the parties is that of strangers, a presumption favoring a resulting trust is created in favor of the person paying the consideration for the property, title to which is taken in the name of the other. However, where the relationship is that of husband and wife and the husband pays the consideration for the property and has title taken in the name of his wife a resulting trust is more difficult to establish by virtue of the presumption of gift. This presumption is rebuttable, however, the facts must be definite and unequivocal in order to constitute a successful rebuttal.<sup>54</sup>

*Constructive Trusts.* A constructive trust is created by a court of equity for the purpose of preventing fraud or unjust enrichment. It is not dependent for its creation upon the intent of the parties since it is a remedial device designed to prevent a person from profiting from his own wrongdoing.<sup>55</sup> A very interesting factual situation involving the use of a constructive trust was presented in *Omwake v. Omwake*.<sup>56</sup> In this case the husband purchased property under a contract for deed in his own name, however, subsequently he assigned the contract to his wife. Thereafter, his wife delivered the assignment to a real estate broker with instructions to sell the property. The husband obtained the assignment from the real state broker without the knowledge of his wife and made marks upon the assignment indicating it was voided. Upon discovery of the fact the wife was assured by her husband that his purpose was not to divest her of any interest in the property and in order to show his sincerity he executed a deed

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52. *Ibid.*

53. 68 So.2d 584 (Fla. 1953).

54. *Medary v. Dalman*, 69 So.2d 888 (Fla. 1954).

55. ATKINSON ON WILLS, p. 270, § 57 (2d ed. 1953).

56. 70 So.2d 565 (Fla. 1954).

in blank in her favor. A prospective purchaser of the property refused to accept the deed signed in blank and thereafter the wife had another deed executed by a person whom she represented to be her husband; however, the person was not so identified by the attorney for the purchaser. The husband purchased the property from the original vendors in his own name; however, the wife conveyed the same property by deed to others. In holding that the husband was constructive trustee of the property for the benefit of his wife the court apparently did so upon the basis that the husband knew of the facts and circumstances regarding the wife's transaction and instead of repudiating it, he, in effect, ratified it. In order to transfer the property from the wife to her grantees the court reasoned that the wife was estopped from claiming any interest adverse to that of her grantees, notwithstanding the existence of the statute requiring a husband to join in a conveyance by his wife of her separate property.<sup>57</sup> It appears that although the court arrived at an equitable result, it did so only by contravening the legislative intent which required joinder of the husband in a conveyance of property by the wife.<sup>58</sup>

*Election.* Generally, a person who receives a benefit under a will must elect to accept the provision made in his favor or to assert his independent, paramount title to property which is rightfully his, although, devised by the testator to another.<sup>59</sup> This necessity for election is based upon the doctrine of estoppel which precludes a person from asserting inconsistent positions, i.e. the will is valid in one respect and invalid in another. To this principle, requiring an election, there are exceptions, one of which found application in the case of *Medary v. Dalman*.<sup>60</sup> In that case the husband alleged that he had paid the entire consideration for property, title to which he had taken in the name of his wife as a convenience only. His wife died, devising a one-fourth interest in the property to her husband who sought to have a resulting trust declared in his favor for the entire fee. In holding that the husband was not obliged to renounce his one-fourth interest under the will in order to assert his right to the entire premises the Florida Supreme Court declared:

This is a case where "the donee would not receive under the will a benefit to which he would not be entitled except for the will" in which event no election is required.<sup>61</sup>

Of course, if the husband was devised property belonging to the testatrix, he would then be obligated to elect between the provision in his favor

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57. FLA. STAT. § 708.04 (1927):

The husband and wife shall join in all sales, transfers and conveyances of the property of the wife, other than personal property and choses in action.

58. *Ibid.*

59. 57 AM. JUR., *Wills* § 1556; ATKINSON ON WILLS, p. 768, § 138 (2d ed. 1953).

60. 69 So.2d 888 (Fla. 1954).

61. *Id.* at 890.

and his independent claim to property belonging to him although devised by the testatrix to another.<sup>62</sup>

*Incorporation by Reference.* It is generally recognized that an outside instrument is capable of being made a part of a last will and testament although not executed in conformity to the statute of wills by virtue of the doctrine of incorporation by reference which has been adopted by a number of states. However, before the doctrine can be applied the instrument sought to be incorporated must be in existence at the time of the will's execution, it must be referred to with sufficient certainty for proper identification, and reference to it must indicate that the instrument is already in existence. Thus, it has been held that where the instrument sought to be incorporated by reference is not in existence at the time of the will's execution it cannot be regarded as a part of the will.<sup>63</sup> This holding is deemed necessary in order to prevent the perpetration of fraud. Since the doctrine of incorporation by reference is, in effect, an exception to the statute of wills, care must be exercised in its application in order to preserve the purpose and intent of the statute of wills.

*Compensation of Trustees.* At the common law a trustee was not entitled to compensation since his office was regarded as honorary in character and it was a privilege to be selected for the performance of the duties. However, today it is generally conceded that a trustee is entitled to compensation which is conferred either by statute or judicial decision. Where there is no statute expressly defining the amount of the trustee's compensation, it is generally agreed that he is entitled to reasonable compensation as determined in the light of all surrounding circumstances. The factors employed in determining what is reasonable by way of trustee's compensation are:

1. The extent of the trust corpus;
2. The nature of the trust property;
3. The nature of the trustee's activities;
4. The benefits inuring to the trust as a result of the trustee's services;
5. The rendition of services by the trustee which are of benefit to the trust and are not regarded as normal functions of the trustee.

Thus, in the case of *Osius v. Miami Beach First National Bank*,<sup>64</sup> it was held that where a trustee performed no services with the exception of distributing the trust corpus and where the trust corpus consisted of \$250,000 in value, a fee of \$12,500 was excessive. However, where the trustee performed extraordinary service thereby benefiting the estate in litigation involving the estate, additional compensation was warranted.<sup>65</sup>

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62. 57 AM. JUR., *Wills* § 1557.

63. *In re Gregory's Estate*, 70 So.2d 903 (Fla. 1954).

64. 74 So.2d 779 (Fla. 1954).

65. *Id.* at 780.

*Interpretation of Attestation.* The necessity for witnesses to a will to subscribe their names to the instrument was presented for the first time in Florida in the case of *In re Watkin's Estate*.<sup>66</sup> In this case, the testator requested two persons to bear witness to his signature which he was about to affix to his last will and testament and further requested them to subscribe their signatures to the instrument. After the testator had affixed his signature one of the witnesses signed his name, however, the other refused to do so. The will was offered for probate and denied by the county judge upon the ground that it was not properly executed as required by the statute of wills. The Supreme Court affirmed the lower court's holding upon the ground that the term "attesting witnesses" was used by the legislature in the broader sense, rather than in the narrow and restricted sense. In arriving at this conclusion the Supreme Court emphasized the statutory provision which requires that all devises and bequests to "subscribing witnesses" are void unless there are two other disinterested witnesses to the will.<sup>67</sup> Such a strict interpretation derives considerable justification from the fact that its effect is to prevent the perpetration of frauds. However, where the evidence conclusively establishes that no fraud was committed and since the language of the statute<sup>68</sup> imposing requirements for the execution of wills does not make mention of "subscribing," the holding appears to be unjustified. Apparently, the legislature recognized the problem to be legislative in nature since it enacted a statute<sup>69</sup> defining attestation as including subscription.

*Legislation.* The law of succession and trusts received adequate representation during the 1955 legislative session. Although some statutes enacted were of minor importance<sup>70</sup> the majority of them were designed to effectuate proper administration of estates and a savings to estates by dispensing with the necessity of certain steps without sacrifice of safeguards.

In order to prevent intermeddling in the estate of a domiciliary decedent, the Florida Legislature provided, in effect, that no title to personal property shall pass until administered and distributed by the domiciliary personal representative.<sup>71</sup> While this provision imposes a very great burden upon non-resident bona fide purchasers for value, without notice, of the personal property of a decedent, it derives justification by preventing dissipation of the estate of a decedent without authorization.

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66. 75 So.2d 194 (Fla. 1954).

67. FLA. STAT. § 731.07(5) (1951).

68. FLA. STAT. § 731.07 (1945).

69. FLA. STAT. § 731.03 (1955).

70. Laws of Fla., c. 29948 (1955) (exempts profit-sharing trusts for the benefit of employees from the rule against perpetuities); Laws of Fla., c. 29876 (1955) (authorizes a trustee of an express trust to keep insurance in full force and effect for the proper protection of property); Laws of Fla., c. 29861 (1955) (proceeds of a life insurance policy to be paid to the personal representative of a decedent's estate when the insurance is payable either to the insured or to the estate of the insured, his executors, administrators or assigns, or in the event the insured should die intestate).

71. FLA. STAT. § 732.26(1) (1955).

In an effort to further safeguard decedent estates the legislature imposed the obligation upon personal representatives to take possession of the real and personal property situated within Florida of persons dying while domiciled in a sister state or foreign country.<sup>72</sup> In the light of these two statutory provisions it is evident that the legislature has made every effort to preserve the estate of decedents, whether domiciled in the State of Florida or non-residents leaving property situated within the State of Florida.

To properly determine whether a personal representative is performing his statutory duties a requirement was imposed obligating the personal representative to file an inventory reflecting the real and personal property of the decedent without regard to situs.<sup>73</sup> Although several grounds existed for the removal of a personal representative, an additional ground was added by the 1955 legislature whereby a personal representative is subject to removal because of conflicting or adverse interest which he may hold against the estate.<sup>74</sup> However, in determining adversity as grounds for removal an exception is made in the case of a widow with the right of election to take dower or the right to claim a family allowance or exemption.

In an effort to preserve an estate from unnecessary expense and delay, the legislature provided for the waiver of the final accounting by the personal representative when all heirs and beneficiaries manifest their consent in writing.<sup>75</sup> In order to prevent possible injustices, the waiver does not operate automatically but remains subject to consent by the court. An additional statute was enacted which confers upon the County Judge the right to allot and set off dower, thereby dispensing with the necessity of appointing three commissioners in instances where the interested parties agreed to the allotment or where the assets are of such a nature as to permit allotment of dower definitively and without doubt.<sup>76</sup>

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72. FLA. STAT. § 733.01(1) (1955).

73. FLA. STAT. § 733.03 (1955).

74. FLA. STAT. § 734.11 (1955).

75. FLA. STAT. § 734.22 (1955).

76. FLA. STAT. § 733.13 (1955).